IN THE

# Supreme Court of the United States

OCTOBER TERM, 1964

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Docket No. 857

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SENECA NATION OF INDIANS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

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## PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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In response to the Brief for the United States in Opposition, petitioner submits that the Government has misrepresented the position of the Seneca Nation in this case on the following points:

(1) Respondent thrice states that petitioner has denied the Government's authority to take more land than is necessary to "duplicate" the existing two-lane

roadway. Brief in Op., pp. 3, 4, 5. On the contrary, the Seneca Nation asserts herein only that the Secretary of the Army has no authority to condemn more reservation land than is necessary to build a replacement road adequate for "traffic existing at the time of the taking," as provided under the controlling statute (33 U.S.C. 701r-1(c)). Pet., p. 12. In opposing a four-lane, limited-access highway, petitioner does not contend that the Government is empowered merely to "duplicate" existing facilities, but rather relies upon the Secretary's own factual determination that another two-lane road will accommodate the current volume of traffic across the Allegany Reservation.

(2) According to the respondent, "Petitioner argues . . . that where Indian lands are involved, Congress must authorize specifically the precise details of the condemnation. . . ." Brief in Op., p. 4. To the contrary, the Seneca Nation here argues that, where *treaty-protected* Indian lands are involved, Congress in authorizing a flood control project may delegate to an administrative agency the precise details of condemnation, but a subordinate official may not, under the guise of administrative discretion, pass beyond the project which Congress authorized and invoke the Federal power of eminent domain in aid of a State public work which Congress has never authorized. Pet., pp. 14-15.

(3) Respondent imputes to petitioner "the notion that Congress must expressly authorize by 'special enactment' each particular taking of Indian land. . . ." Brief in Op., p. 4. On the contrary, the Seneca Nation here urges that the basic test for giving or withholding effect to an express treaty protection against

the invasion of Indian lands is not whether Congress has authorized the taking by special legislation, but whether Congress, in some sufficiently clear and specific way (i.e., statute, appropriation, debate or hearing), has shown an intent to sanction condemnation within the reservation. Pet., p. 13.

The Government's distortions of petitioner's argument point up the significance of the question here presented to relations between the United States and treaty tribes, and reinforce the Seneca Nation's request that a writ of certiorari issue in this case.

Respectfully submitted,

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